



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-3223

Dear Mr. Durfee:

You ask that we reconsider the portion of our decision in Open Records Letter No. 98-2359 (1998) that determined that the Harris County District Attorney (the "district attorney") may not withhold from disclosure pursuant to Government Code section 552.103 information that the district attorney provided the defendant in the pending litigation. Your request was assigned ID# 120851.

Open Records Letter No. 98-2359, which concerned a request for all information pertaining to the prosecution of John Cuevas in cause number 785430, concluded that the district attorney had established that section 552.103 was generally applicable to the requested information. However, the ruling determined that, as no litigation interests exist in the information disclosed to the defendant, section 552.103 is inapplicable to such information. The district attorney had raised section 552.108, the law enforcement exception, in its original request. You now ask that we consider the applicability of section 552.108 to the information not covered by section 552.103.

We maintain that section 552.103 is inapplicable to information disclosed to the opposing party. Open Records Decision Nos. 349 (1982), 320 (1982). However, we believe the district attorney continues to have a law enforcement interest in withholding information it shared with the criminal defendant's representative. *See* Open Records Letter No. 96-2248 at 2 (1996); *see also* Open Records Decision No. 579 (1990). You characterize the information as the work product of the Harris County prosecutors. You represent that the information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that the information reflects the mental impressions or legal reasoning of an attorney representing the state. You also assert that the

release of the information would interfere with the detection, investigation, or prosecution of crime." We therefore conclude that the district attorney may withhold from the requestor the information which has been disclosed to the defendant based on section 552.108 of the Government Code and modify Open Records Letter No. 98-2359 (1998) in accordance with this decision.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Deputy Chief
Open Records Division

KHH/rho

Ref.: ID# 120851

cc: Mr. Kirk Cox
6115 Chaffin
Houston, Texas 77087